

M.T. SHANNON, H27892

Name and Prisoner/Booking Number

CMF

Place of Confinement

PO BOX 2500

Mailing Address

VACAVILLE CA 95696-2500

City, State, Zip Code

FILED

Aug 31, 2022

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

M.T. SHANNON
(Full Name of Plaintiff)

Plaintiff,

v.

(1) HOWARD MOSELEY, CHIEF OF
(Full Name of Defendant)

(2) APPEALS;

(3)

(4)

Defendant(s).

☐ Check if there are additional Defendants and attach page 1-A listing them.

CASE NO. 2:22-cv-1530-JDP (PC)

(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

☐ Original Complaint

☒ First Amended Complaint

☐ Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

☒ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983

☐ 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).

☐ Other: _____

2. Institution/city where violation occurred: CMF-VACAVILLE

D. CAUSE OF ACTION

CLAIM I

1. State the constitutional or other federal civil right that was violated: 8th AND 14th AMENDMENT TO THE U.S. CONSTITUTION.

2. **Claim I.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Claim I. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

PLEASE SEE PAGES 7 THROUGH 21.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

EMOTIONAL DISTRESS, STOMACH ACHES, HEADACHES, NAUSEA

5. **Administrative Remedies:**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- b. Did you submit a request for administrative relief on Claim I? ☒ Yes ☐ No
- c. Did you appeal your request for relief on Claim I to the highest level? ☒ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. ☒

CLAIM II

1. State the constitutional or other federal civil right that was violated: 8th AND 14th AMENDMENT
TO U.S. CONSTITUTION.

2. **Claim II.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input checked="" type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Claim II. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.
PLEASE SEE PAGES 7 THROUGH 21.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

EMOTIONAL DISTRESS, STOMACH ACHES, HEAD ACHES, NAUSEA.

5. **Administrative Remedies.**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- b. Did you submit a request for administrative relief on Claim II? ☒ Yes ☐ No
- c. Did you appeal your request for relief on Claim II to the highest level? ☒ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

CLAIM III

8th AND 14th AMENDMENTS

1. State the constitutional or other federal civil right that was violated: TO U.S. CONSTITUTION,

2. **Claim III.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

- ☐ Basic necessities ☐ Mail ☐ Access to the court ☐ Medical care
☐ Disciplinary proceedings ☐ Property ☐ Exercise of religion ☐ Retaliation
☐ Excessive force by an officer ☐ Threat to safety ☐ Other: ADA /RA VIOLATION

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Claim III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

PLEASE SEE PAGES 7 THROUGH 21.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).
EMOTIONAL DISTRESS, STOMACH ACHES, HEAD ACHES, BAUSEA.

5. **Administrative Remedies.**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
b. Did you submit a request for administrative relief on Claim III? ☒ Yes ☐ No
c. Did you appeal your request for relief on Claim III to the highest level? ☒ Yes ☐ No
d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. XX

If you assert more than three Claims, answer the questions listed above for each additional Claim on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

~~FOR JUDGMENT IN PLAINTIFF'S FAVOR; COMPENSATORY DAMAGES IN THE
AMOUNT OF ONE MILLION DOLLARS;; FOR COST OF THE SUIT WAIVED; ONE
MILLION DOLLARS IN PUNITIVE DAMAGES; ON JUNCTIVE RELIEF COMPELLING
THE STATE TO TAKE ACTION; SUCH OTHER AND FURTHER RELIEF AS THE
COURT DEEMS JUST AND PROPERT.~~

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/30/22

DATE


SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or
other person who helped prepare this complaint)

WILLIAM FRIERY, E02093

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space you may attach more pages, but you are strongly encouraged to limit your complaint to twenty-five pages. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages. Remember, there is no need to attach exhibits to your complaint.

INTRODUCTION

I. This lawsuit arises out of the deliberate indifference exhibited by correctional staff at CMF. To provide Plaintiff with

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necessities to
effectively
communicate, although
he is identified as an
ADA/RA inmate.

II. Jurisdiction and venue:

The claims arised

out of Solano County.
California, in and for
the City of Vacaville
judicial district , in
which jurisdiction is
conferred pursuant to
Title 42 USC 1331 and

1343. Therefore, venue
Is proper to accure this
action in the Eastern
District. where the
crimes occurred.

III. Parties:

1) Plaintiff: Is a 58-year-old African American male inmate prisoner proceeding in pro per and In Forma Pauperis status.

Plaintiff is identified as

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an ADA/RA inmate
because he is legally
blind (See Exhibit A
“declaration.”),
amongst other issues.
Defendant: Is the Chief
of Inmate Appeals
Branch. CDCR

Headquarters.

IV. Statement of Facts

2. On April 15, 2022.

The Office of Appeals
received Plaintiff's

Inmate grievance
complaining about
needing a magnifying

Page 13

Device and a typewriter as a Durable Medical Equipment (DME) to assist him in communicating, since he is legally blind and cannot otherwise get his basic necessities

Page 14

met without said items.

3. Since December 18, 2007, Plaintiff has been identified as an ADA/RA Inmate because of his blindness and low vision, which resulted from two failed corneal

transplants.

4. On 06/15/22, the appeal, log No. 223095.

Was fully exhausted and disapproved by Defendant Moseley, who stated “You are

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accessing all
departmental
programs, services. And
activities for wjocj you
are eligible.” which
Plaintiff assert as being
untrue since he cannot
see pr read to

participate in certain programs that require sight or vision.

Nevertheless,

Defendant Moseley went on to state that

“The request was appropriayely

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addressed in log No.
CMF-M-22-00013, and
that he determined
that the response was
substantive. However.
Plaintiff believes

Moseley ererred in his
decision-making. to
Plaintiff's detriment,
rendering a decision
based on discrimination
And deliberate
indifference to his
Psge 20

serious medical needs,
in violation of the 8th
Amendment to the U.S.
Constitution.

EXHIBIT A
DECLARATION

DECLARATION OF MICHAEL SHANNON

I, Michael Shannon, declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation ("CDCR") number is H27892. I am currently housed at the California Medical Facility ("CMF") on Facility B, Building 3 ("B3"). I am 56 years old.

3. I have been incarcerated in CDCR since March 9, 2001.

4. I am an *Armstrong* class member. I am designated as DPO and DPV. I am blind in my right eye and have very low vision in my left eye. My field of vision is limited to 20 degrees, so I can't see things on the right or left side of me. My vision is very blurry and cloudy, and it's been getting blurrier every year. I also have sensitivity to light, both sunlight and bright indoor lights, which gives me headaches and eye strain. I lost most of my vision after a failed corneal transplant procedure in December 2018; before then, I was not blind. I previously used eyeglasses to read but that's it. Now, even squinting doesn't help me read the words on a page without a high-powered magnifier.

5. The full-page magnifiers and card-sized magnifiers that they have here are useless. With the card magnifiers, even if you tried using it to magnify something small, like a ducat, it wouldn't help. No one finds them useful. Even when I lost my magnifying glass in October 2021 and they gave me a card magnifier as a substitute, I didn't use it because I can't see anything with it. The full-page magnifier that you can use in the law library doesn't work either. It's all scratched up and cloudy, and even if they bought a new one, it doesn't magnify the words large enough for someone with very limited vision like me.

6. My non-electronic magnifying glass used to work OK for me, but since my vision has been getting cloudier, it takes me a lot longer to read things with it. It just doesn't make the words big enough, and if you try moving the magnifying glass around to make the words bigger and move it too far away from the page, then the words just get

1 cloudy. Also, depending on how you hold it, sometimes it flips the words upside down, so
2 you have to move it around to make the words look right.

3 7. The electronic magnifiers are totally different, they're way better. With the
4 Amigo that they have in the law library, for me the main thing that's better is that you can
5 zoom in and out to the perfect word size, whereas with the non-electronic magnifying glass
6 you can't do that—and once your vision gets worse like mine did, whatever magnifying
7 glass you were using becomes useless. Whereas the electronic magnifier makes the words
8 sharp so you can actually read them.

9 8. The other thing that makes the electronic magnifier way better than the
10 magnifying glass is that you can change the brightness. When I'm sitting in the dorm, I try
11 to read with the magnifying glass but the brightness from the overhead lights makes the
12 white background on the pages too bright, and I can't read for very long, maybe 20
13 minutes at a time before I have to stop and pause for 10 minutes. This doesn't happen with
14 the Amigo because you can change the brightness—it makes the pages darker.

15 9. Because of the zoom and the brightness-changing feature on the Amigo, I
16 can read a four-page letter with the Amigo in about 15 minutes. With the magnifying glass
17 it will take me about 45 minutes to read the same letter, and even then, I'm not sure if I'm
18 getting all the words right because I have to keep maneuvering the magnifying glass
19 around to try and make the words clear.

20 10. The Merlin desktop magnifier in the law library is also excellent. Because of
21 its large screen, it can blow up a much greater amount of text than just a paragraph or
22 sentence like you do with a smaller magnifier. So with the desktop magnifier, I can
23 actually read legal cases pretty quickly without getting confused. You can also change the
24 brightness on it like with the Amigo; I set the brightness at about seventy percent most
25 times. When I use the Merlin I can actually do legal research for my cases—most recently
26 I was using it to read some cases that I printed out about how to admit evidence in a civil
27 case on a writ of mandate.

1 11. The problem is that they keep these devices in the law library and I only get
2 to go there at most twice a week for two hours at a time, Sundays and Wednesdays. But
3 even that doesn't always happen—like in January 2022 my unit was on quarantine so we
4 didn't get to go to the library, which meant that for weeks I couldn't read this letter that I
5 had from my sister that was just sitting next to my bed. The magnifying glass I had in my
6 cell didn't make it big enough. I just had to wait until I could go to the library before I
7 could read the mail. (On October 28, 2021, I filled out an ADA request form asking to be
8 able to use an Amigo in the housing unit but the RAP responded that CMF doesn't check
9 out Amigo magnifiers to let us use in the housing units. I have attached their response as
10 an exhibit to my declaration.)

11 12. Even when I do get to the library, I end up having to prioritize my legal
12 research over reading anything else, so I don't get to read other stuff that I need or want to
13 read. For example, a few months ago, I got a letter from my fiancée, and her handwriting is
14 really small so I need the electronic magnifiers to read her letters clearly. But I didn't have
15 time to read her letter using the Merlin or Amigo in the law library because I had to use all
16 my library time on legal research for my civil case. So I tried using my magnifying glass
17 back in the dorm to read it, and I made it through the letter eventually, but it took me two
18 days to read it and the letter was just a page and a half long. And even then I wasn't totally
19 sure what it said, so at my next library ducat, I had to use some of my time to review the
20 letter and make sure of what it actually said.

21 13. I know they also have electronic magnifiers in education, but I'm not
22 allowed to use those because I'm not enrolled in education. I even wrote to the principal
23 and vice principal and asked about this and they said I don't have access to those devices.

24 14. I have gotten anxiety from not being able to read these letters from family.
25 My mother's got diabetes and high blood pressure and my sister has sciatica, so when I can
26 tell that the letter is from my family, I worry about their health when I can't read the letter
27 until a day or a few days later in the library to find out what it says.

1 15. There is also a lot of written material from CDCR that I can't read without
2 the law library magnifiers. For example, the Title 15 regulations that they give you every
3 six months, regular 602 responses and healthcare 602 responses, literature from the law
4 library, Christian literature from the chaplain as well as the weekly Prophetic Word
5 newsletter, the San Quentin newsletter, my medical records, and the Bible—the print for
6 all this stuff is too small for me. The only thing that they print in large print for me are the
7 Reasonable Accommodation Panel responses, which they put in 18 point font, which is
8 sufficient. Everything else is in normal or small print.

9 16. I've had too many bad experiences with other inmates and ADA workers to
10 rely on them for reading and writing. In 2009, there was an inmate I knew who would help
11 me about twice a week with reading and writing; we would sit at a table together in the
12 dayroom and I would formulate what I wanted to say out loud and then he would write it
13 down. I had to give him about ten dollars a week in commissary in exchange, and I only
14 get about \$130-140 every three months from my mother in commissary funds. But when
15 he read my letters to me, turns out he got a hold of my mother's address, too. He wrote to
16 her, saying that he wanted to get with her and that he wanted her to be his girl. It shook my
17 mother up pretty bad. She read the letter to me over the phone and it was so upsetting that I
18 told her to stop. I couldn't take it. I didn't know when he was going to parole and I worried
19 that he might pay my mother a visit.

20 17. More recently, in 2020, there was an ADA worker who pushed me around in
21 my wheelchair to appointments, and on the way back from commissary he took a bag out
22 of the back of my wheelchair that had \$40 worth of canteen in it. I yelled, "Hey man where
23 you going, whatchu doing, you got my stuff!" but he ran away. I didn't report it because I
24 didn't want him or his homeboys beating me up.

25 18. These experiences just made me leery of depending on other people for my
26 personal stuff. I don't want anyone getting access to my letters and contacting my family
27 like before. But there are still sometimes where I have no choice and have to depend on the
28 guys in my dorm, like when I'm filling out the pre-printed canteen slips—I can't read these

1 on my own, the print is too small. In the dorm, I know the guys who are doing it for me,
2 but I knew that guy in 2009 pretty well, too, and he still took advantage of me. You just
3 never know who you can trust in prison, and I'd rather just be able to read and write on my
4 own.

5 19. When I ask staff for assistance, they just tell me to find an ADA worker for
6 help. During the week of January 10, 2022, for example, I asked a nurse for help filling out
7 a canteen slip and she said, "I'll get an ADA worker to do it for you," but I declined
8 because I didn't want an ADA worker seeing what I was buying from canteen after what
9 happened in 2020, described above. Another time, during the week of January 3, I asked
10 custody staff to help me dial a phone number and the officer said, "Well just get an ADA
11 worker to do it for you." And I declined because I don't want other inmates having my
12 family's phone numbers, and the CO just said, "Oh well."

13 20. Besides wanting privacy, I don't want to feel like I'm imposing on anyone,
14 so I just back off. It just feels like I'm a burden on someone else who doesn't want to do
15 anything for me. My eyesight is so bad and, as a result, my handwriting is terrible, so I
16 know I need help, but when I ask for it and I can't get it, it makes me feel helpless and
17 hopeless. So it would be great to have the electronic auxiliary in the housing units and
18 specifically in our cells. That way I could get my reading done every week. I could feel
19 more independent. Those devices are reliable—I wouldn't have to depend on no one else
20 to do my reading. And it would just be really handy to use for legal documents and
21 personal letters. It would also help with handwriting because with an electronic magnifier I
22 could see the text well enough to watch my hand move the pen on the paper.

23 21. Having access to these devices in the dayroom but not in the cells would be
24 insufficient. They should not be allowed to limit the times of day that we are able to read,
25 but if they limited access to the electronic magnifiers to dayroom use, that's exactly what
26 would happen—we wouldn't be able to read in the evening or night, just like now. I would
27 really like to be able to read in the evenings. It would be nice to be able to read poetry and
28

1 the Bible before I go to bed. These are things I can't do now, because I don't have an
2 electronic magnifier in my cell.

3 22. Even if we get the electronic magnifiers, though, having things in large print
4 would be really helpful because I can't stare at the small magnifier screen for too long.
5 After about 30 minutes, my eyes start to feel sore, like someone's sticking pins in my eyes.
6 So the magnifiers are great for things that I read quickly, like looking up Title 15
7 regulations, reading the Eastern District local rules, and short pieces of legal mail. But for
8 stuff that takes me longer to read—like legal cases, the Bible, long articles in the
9 magazines—that's where the large print is important. I can read large print documents for
10 extended amounts of time without getting that pain that I feel when I use a small electronic
11 magnifier for too long. It would also help with reading longer documents if they had
12 electronic magnifiers with bigger screens that are actually designed for reading longer
13 documents—the Amigo is something you're only supposed to use for spot reading.

14 23. The other reason that we need the actual documents is that these machines
15 break down sometimes. Like right now, the Merlin in the library has been down for about
16 six weeks. I can't read long documents like legal cases as well with the smaller Amigo
17 magnifier, so while the Merlin is down, I don't have enough access to the tools I need for
18 reading.

19 24. Overall, reading is just very important to me, especially reading the Bible.
20 When I read it, I feel like I have more insight into myself, into my spiritual side. Having
21 the ability to read the Bible makes me feel satisfied spiritually. If they had a larger print
22 Bible or if I had an electronic magnifier in my cell, I could read it whenever I wanted. But
23 for now, the only times I can read the Bible are when I get to the law library and can use
24 the Merlin, or when I can find someone to read it to me.

25 25. This declaration was taken and written for me by my attorney at Prison Law
26 Office, Jacob J. Hutt. Due to my vision disability, and my lack of consistent access to a
27 high-powered magnifier, Mr. Hutt provided me with a large-print version of this
28 declaration, which I reviewed.

1
2 I declare under penalty of perjury under the laws of the United States of America
3 that the foregoing is true and correct, and that this declaration is executed at Vacaville,
4 California, on this 31st day of AUGUST, 2022.

5
6 

7 Michael Shannon

8 In order to accommodate Mr. Shannon's vision disability, on July 29, 2022, I created
9 a large-print version of this declaration for Mr. Shannon to review. The substance of that
10 large-print version, which Mr. Shannon confirmed was true and correct, is identical to the
11 substance of this normal-print version.

12
13 

14 Jacob J. Hutt